Ikatan Kelab-Kelab Melayu Negeri Pulau Pinang (499-Penang) (suing through its President, Dato' Seri Hj Mohd Yussof Latiff) & Ors v Yayasan Bumiputra Pulau Pinang & Ors and another appeal

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NOS 02(I)-54–07 OF 2012(P) AND 02(I)-55–07 OF 2012(P)
HASHIM YUSOFF, SURIYADI, AHMAD MAAROP, HASAN LAH AND ZALEHA ZAHARI FCJJ
28 OCTOBER 2013

Civil Procedure — Striking out — Writ and statement of claim — Locus standi — Sale and purchase agreements entered for sale and joint venture of properties — Properties were fully-owned companies — Allegation that properties were undervalued — Claim for breach of trust and/or breach of fiduciary duties and unjust enrichment — Application for declaration that transfer of properties null and void — Whether appellants had locus standi to commence action — Application to strike out — Whether beneficiary under trust had locus standi to bring action in breach of trust against company limited by guarantee — Rules of the High Court 1980 O 18 r 19(1)(a), (b) & (d)

In the present appeal, the appellants claimed to represent Malays in Pulau Pinang while the first respondent was a foundation aiming at selectively acquiring reserved shares in enterprises on trust for Pulau Pinang Malays. Two sale and purchase agreements ('SPA') were entered into between the third and the eighthh respondents and between the ninth and the eighthh respondents for the sale and joint venture of three pieces of properties in Pulau Pinang ('the said properties'). The said properties were acquired by the third and the ninth respondents which were fully-owned companies of the first respondent and were subsequently transferred to the eighthh respondent. The appellants contended that the properties transferred to the eighthh respondent were undervalued and therefore claimed for breach of trust and/or breach of fiduciary duties and unjust enrichment against the respondents in the High Court. The appellants sought a declaration that the transfer of the said properties was null and void. However, the respondents filed an application under O 18 r 19(1)(a), (b) and (d) of the Rules of the High Court 1980 ('RHC') to strike out the appellants' writ of summons and statement of claim on the ground that the appellants did not have the locus standi to commence the action against the respondents. The striking out application was allowed by the High Court and on appeal to the Court of Appeal, the High Court's decision was upheld as it was held that since the registered owners of the three pieces of land were the third and ninth respondents and since the appellants were not members of the third and ninth respondents, they had no locus standi

to sue the respondents because they had no reasonable cause of action against the respondents. Hence, the present appeal. The primary issue that arose before the court was whether a beneficiary under a trust had the locus standi to bring an action in breach of trust against a company limited by guarantee incorporated under the Companies Act 1965 pursuant to the objective of the trust.

Held, dismissing the appeal with costs:

(1) To enable the appellant to initiate this action, they had to show that they had the necessary locus standi. The said properties were registered in the names of the third and the ninth respondents which in turn were fully-owned by the first respondent. Although they might have had a cause of action since the first respondent was formed to help the economic position of the Pulau Pinang Malays, locus standi would be a necessary precondition before any party could bring the action. There was no evidence to show that the appellants neither had a share nor became a trustee or director of the first, third or ninth respondents (see para 35).

(2) It might well be that the appellants were suing the respondents for alleged breach of trust, fiduciary duties, and so forth but the fundamental principles of company law could not be disregarded ie the *sine qua non* for the appellants to bring the action against the respondents was that the appellants had to be members of the third or the ninth respondents. In the absence of such membership, the Court of Appeal entirely agreed with the decision of the High Court that the appellants had no locus standi to sue the respondents and therefore, the striking out made by the High Court was not wrong (see para 36).

(3) Having gone through the grounds of judgment of the learned High Court judge, the court was of the view that he had given due consideration to the issues raised, based on the evidence before him and had exercised his discretion correctly in striking out the action. Likewise, the Court of Appeal too was right in affirming the High Court decision. There was no reason to differ with the decisions of the courts below (see paras 37–38).

[Bahasa Malaysia summary

Dalam rayuan ini, perayu-perayu mendakwa telah mewakili bangsa Melayu di Pulau Pinang manakala responden pertama adalah yayasan bertujuan untuk memperoleh secara terpilih saham khas dalam perusahaan atas amanah untuk bangsa Melayu Pulau Pinang. Dua perjanjian jual beli ('PJB') yang dimasuki antara responden-responden ketiga dan kelapan dan antara responden-responden kesembilan dan kelapan untuk jualan dan usaha sama tiga bidang hartanah di Pulau Pinang ('hartanah-hartanah tersebut').

A Hartanah-hartanah tersebut telah diperoleh daripada responden-responden ketiga dan kesembilan yang merupakan syarikat-syarikat milik penuh responden pertama dan kemudian telah dipindah kepada responden kelapan. Perayu-perayu berhujah bahawa hartanah-hartanah tersebut yang telah dipindah kepada responden kelapan adalah di bawah harga pasaran dan oleh
B itu mendakwa berlaku pelanggaran amanah dan/atau pelanggaran kewajipan fidusiari dan pengayaan yang tidak adil terhadap responden-responden di Mahkamah Tinggi. Perayu-perayu memohon deklarasi bahawa pemindahan hak milik hartanah-hartanah tersebut adalah terbatal dan tidak sah. Walau bagaimanapun, responden-responden telah memfailkan permohonan di
C bawah A 18 k 19(1)(a), (b) and (d) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') untuk membatalkan writ saman dan penyataan tuntutan perayu-perayu atas alasan bahawa perayu-perayu tidak mempunyai locus standi untuk memulakan tindakan terhadap responden-responden. Permohonan pembatalan itu telah dibenarkan oleh Mahkamah Tinggi dan atas
D rayuan ke Mahkamah Rayuan, keputusan Mahkamah Tinggi telah dikekalkan kerana ia telah memutuskan bahawa oleh kerana pemilik-pemilik berdaftar ketiga-tiga bidang tanah tersebut adalah responden-repsonden ketiga dan kesembilan dan oleh kerana perayu-perayu bukan ahli kepada responden-responden ketiga dan kesembilan, mereka tidak mempunyai locus
E standi untuk menyaman responden-responden tersebut kerana mereka tiada kausa tindakan yang munasabah terhadap responden tersebut. Justeru, rayuan ini. Isu utama yang timbul di hadapan mahkamah adalah sama ada benefisiari di bawah amanah mempunyai locus standi untuk memulakan tindakan kerana pelanggaran amanah terhadap syarikat berhad menurut jaminan yang
F diperbadankan di bawah Akta Syarikat 1965 menurut objektif amanah itu.

Diputuskan, menolak rayuan dengan kos:

(1) Bagi membolehkan perayu memulakan tindakan ini, mereka hendaklah
G menunjukkan bahawa mereka mempunyai locus standi yang diperlukan. Hartanah-hartanah tersebut telah didaftarkan atas nama responden-responden ketiga dan kesembilan yang sebaliknya adalah dimiliki sepenuhnya oleh responden pertama. Walaupun mereka mungkin mempunyai kausa tindakan oleh kerana responden pertama
H ditubuhkan untuk membantu kedudukan ekonomi bangsa Melayu Pulau Pinang, locus standi adalah prasyarat yang perlu sebelum mana-mana pihak boleh memulakan tindakan. Tiada keterangan untuk menunjukkan bahawa perayu-perayu tidak mempunyai saham mahupun menjadi pemegang amanah atau pengarah
I responden-responden pertama atau kesembilan (lihat perenggan 35).

(2) Walaupun perayu-perayu mengemukakan saman kepada responden-responden kerana dakwaan pelanggaran amanah, kewajipan fidusiari dan seterusnya tetapi prinsip asas undang-undang syarikat tidak boleh diabaikan, iaitu *sine quo non* untuk perayu-perayu memulakan

tindakan terhadap responden-responden adalah bahawa perayu-perayu hendaklah merupakan ahli-ahli kepada responden-responden ketiga atau kesembilan. Dengan ketiadaan keahlian tersebut, Mahkamah Rayuan bersetuju sepenuhnya dengan keputusan Mahkamah Tinggi bahawa perayu-perayu tidak mempunyai locus standi untuk menyaman responden-responden dan oleh demikian, pembatalan yang dibuat oleh Mahkamah Tinggi tidak salah (lihat perenggan 36).

(3) Setelah meneliti alasan-alasan penghakiman hakim Mahkamah Tinggi yang bijaksana, mahkamah berpendapat bahawa beliau telah memberikan pertimbangan sewajarnya berhubung isu-isu yang ditimbulkan, berdasarkan keterangan di hadapan beliau dan telah melaksanakan budi bicara beliau dengan betul dalam membatalkan tindakan itu. Begitu juga, Mahkamah Rayuan adalah betul dalam mengesahkan keputusan Mahkamah Tinggi. Tiada sebab untuk membezakan keputusan-keputusan mahkamah bawahan (lihat perenggan 37–38).]

Notes

For cases on writ and statement of claim, see 2(4) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 8171–8176.

Cases referred to

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36; [1993] 4 CLJ 7, SC (refd)

Geh Cheng Hooi & Ors v Equipment Dynamics Sdn Bhd and other appeals [1991] 1 MLJ 293; [1991] 1 CLJ (Rep) 133, SC (refd)

Government of Malaysia v Lim Kit Siang United Engineers (M) Berhad v Lim Kit Siang [1988] 2 MLJ 12; [1988] 1 CLJ 219, SC (consd)

Mariam bte Shaik Mohd Omar v Ong Chin Poh [1994] 3 MLJ 419, HC (refd)

Tengku Abdullah Ibni Sultan Abu Bakar & Ors v Mohd Latiff bin Shah Mohd & Ors and other appeals [1996] 2 MLJ 265; [1997] 2 CLJ 607, CA (refd)

Tio Chee Hing & Ors v Government of Sabah [1981] 1 MLJ 207, FC (refd)

Legislation referred to

Companies Act 1965
Pengurusan Danaharta Nasional Berhad Act 1998 s 72
Rules of the High Court 1980 O 18 r 19, O18 r 19(1)(a), (b), (d)
Trustees (Incorporation) Act 1952 s 2

Appeal from: Civil Appeal Nos P-02 (IM)-1451 of 2011 and P-02 (IM)-1452 of 2011 (Court of Appeal, Putrajaya)

Sulaiman Abdullah (Abdul Fareed bin Abdul Gafoor with him) (VM Mohan, Fareed & Co) for the appellants.

Ghazi Ishak (B Jeyasingam with him) (Ghazi & Lim) for the first, second, third, fourth, fifth, sixth, seventh and ninth respondents.
Ashok Kumar Mahadev Ranai (Lam Wai Loon and Shannon Rajan with him) (Skrine) for the eighth respondent.

Hashim Yusoff FCJ (delivering judgment of the court):

[1] Two appeals were heard together viz 02(i)-54–07 of 2012(P) and 02(i)-55–07 of 2012(P).

[2] This court had granted leave to the appellants to appeal against the decision of the Court of Appeal which had affirmed the decision of the High Court allowing the respondent's application to strike out the appellants' claim under O 18 r 19 of the Rules of the High Court 1980 ('RHC'). The appellant's successful leave application before us was over the following question:

> Whether a beneficiary under a trust has locus standi to bring an action in breach of trust against a company limited by guarantee incorporated under the Companies Act 1965 pursuant to the objective of the trust?

BACKGROUND FACTS

[3] The appellants claim to represent Malays in Pulau Pinang.

[4] The first respondent is a Foundation incorporated on 8 July 1980 under the Companies Act 1965 and is a company limited by guarantee. Article 1 of the memorandum of association states that the foundation is established in accordance with the new economic policy to selectively acquire the reserved shares in enterprises on trust for Pulau Pinang Malays.

[5] The articles of association ('AA') of the first respondent proposes to register 100 members and the first two members shall be subscribers to the memorandum of the association ('MOA') and any person desiring to be a member must apply in writing to the foundation and upon admission the secretary shall cause his name to be recorded in the register of members.

[6] Article 5 of the AA provides that 'that subscribers to the Memorandum of Association and such other persons as shall be admitted to membership in accordance with these regulations and no others shall be members of the foundation and shall be entered in the Register of Members accordingly'.

[7] The board of trustees ('BOT') is responsible for the management of the affairs of the foundation and the powers of the board are set out in article 25

which includes the power to expand the funds of the foundation, the power to acquire in the name of the foundation, the power to delegate any powers to any committee, to enter into contracts on behalf of the foundation, to borrow money, to make and from time to time to repeal or alter regulations and by-laws etc.

[8] Two sale and purchase agreements ('SPA') dated 22 August 2000 were entered into between the third respondent and the eighth respondent, and between the ninth respondent and the eighth respondent for the sale and joint venture of three pieces of properties situated in Seberang Prai Utama Penang ('the said properties'). The said properties were acquired by the third and ninth respondents which were fully owned companies of the first respondent. The said properties were then transferred to the eighth respondent for the purpose of the joint venture. The appellants' alleged that the value of the properties transferred to the eighth respondent was at an undervalue resulting in a loss of RM115,474,303.30 to the Penang Malays.

[9] The appellants then filed a suit against the respondents for breach of trust and/or breach of fiduciary duties and unjust enrichment in the High Court, seeking a declaration that the transfer of the said properties was null and void. The respondents then filed an application under O 18 r 19(1)(a), (b) and (d) of the Rules of the High Court 1980 ('RHC') to strike out the appellants writ of summons and statement of claim on the ground that the appellants did not have the locus standi to commence the action against all of the respondents.

AT THE HIGH COURT

[10] The learned trial judge held that locus standi was a precondition before any party could bring an action. His Lordship further opined that the allegation that the appellants/plaintiffs had the necessary locus standi by virtue of being the beneficiary to the objective of the establishment of the first respondent did not mean that they had the locus standi as recognised under the law. The mere fact of being the beneficiary was not sufficient to form the capacity and locus standi under the law. On that score, the learned trial judge allowed the striking out application by the first to seventh and ninth respondents under O18 r 19(1)(a) of the Rules of the High Court 1980 ('RHC').

AT THE COURT OF APPEAL

[11] The Court of Appeal in its broad grounds of judgment, held that since the registered owners of the three pieces of land were the third and ninth respondents which were companies registered under the Companies Act 1965, and since the appellants/plaintiffs were not members of the third and ninth

A respondents, they had no locus standi to sue the respondents as they had no reasonable cause of action against the respondents.

THE APPELLANTS' CONTENTION

B **[12]** Learned counsel for the appellants submitted that it is trite law that under O 18 r 19 of the Rules of the High Court 1980, a cause of action can only be struck out when it is 'plain and obvious' and that it is not so in this case (see the case of *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [1993] 4 CLJ 7).

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[13] It was argued that the first respondent was established as a company 'limited by guarantee' and that there were only two members of the company who did not own the first respondent. It was managed by a board of directors responsible to carry out its objectives in accordance with its memorandum of
D association and articles of association. The appellants' case was that the first respondent was a trustee holding assets in trust for and on behalf of the benefit and interest of the Penang Malays through the third and ninth respondents which were wholly owned subsidiaries of the first respondent.

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[14] Learned counsel for the appellant further submitted that the first respondent through its directors (who had been named as co-respondents) herein had unilaterally exercised their discretion by causing the transfer of the said properties to the eighth respondent at an undervalue with an estimated loss
F of RM115,474,303.30 to its beneficiaries. Thus, the first respondent and the directors respondents had committed a breach of trust.

[15] Reference was made to general authorities to support the contention that the respondents owed a fiduciary duty to the beneficiaries (see *Tengku*
G *Abdullah Ibni Sultan Abu Bakar & Ors v Mohd Latiff bin Shah Mohd & Ors and other appeals* [1996] 2 MLJ 265; [1997] 2 CLJ 607; *Geh Cheng Hooi & Ors v Equipment Dynamics Sdn Bhd and other appeals* [1991] 1 MLJ 293; [1991] 1 CLJ (Rep) 133).

H **[16]** Learned counsel for the appellant therefore argued that there was a triable issue as to whether there was a breach of trust committed by the first and fourth to seventh respondents and it was not a plain and obvious case for striking out under O 18 r 19 of the Rules of the High Court 1980.

I THE RESPONDENTS' SUBMISSION

[17] Learned counsel for all the respondents (except eighth respondent) submitted that since the first respondent was a company 'limited by guarantee' under the Companies Act, the provisions of the Companies Act apply. It is not

disputed that there were only two members of the first respondent. Therefore the appellants need to show that they were also members of the first respondent before they could initiate any action against the first respondent.

[18] It was brought to our attention that the leave question as framed, refers only to the first respondent, but there is no relief prayer sought against the first respondent in the appellants' statement of claim. Therefore there really is no cause of action against the first respondent. More so when the property is vested in Danaharta.

[19] Reference was made to *Gower's Principles of Modern Company Law* (6th Ed), whereby it is stated there are three functions of the modern company. From the functional view point there are today three distinct types of companies:

(a) companies formed for purposes other than the profit of their members ie those formed for social, charitable or quasi-charitable purposes. In this case incorporation is merely a mere modern and convenient substitute for the trust;

(b) companies formed to enroll a single trader or a small body of partners to carry on a business; and

(c) companies formed in order to enable the investing public to share in the profits of an enterprise without taking any part in its management.

[20] Learned counsel for the respondents submitted that if it was a charitable organisation, then there was no question of a trust.

[21] Since the appellants could not show that they were members of the first respondent, they accordingly have no locus standi to bring the action against the respondents.

[22] Counsel then referred to the case of *Government of Malaysia v Lim Kit Siang United Engineers (M) Berhad v Lim Kit Siang* [1988] 2 MLJ 12 where it was held that the statement of claim must disclose a cause of action in order to enable the plaintiff to maintain the suit.

SUBMISSION OF COUNSEL FOR THE EIGHTH RESPONDENT

[23] Apart from adopting wholly the submission of counsel for the other respondents, learned counsel for the eighth respondent submitted that the question posed before this court did not affect the eighth respondent.

[24] Counsel argued that the said properties were actually charged to

A Arab-Malaysian Merchant Bank and vested in Pengurusan Danaharta Nasional Bhd. That being so, the appellant's suit to nullify the joint venture agreement and to restrain parties from disposing off any part of the said properties after ten years was an attempt to circumvent the provision of s 72 of the Pengurusan Danaharta Nasional Berhad Act 1998 which reads as follows:

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> 72 Limits on the grant of orders of court
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> Notwithstanding any law, an order of a court cannot be granted —
>
> (a) which stays, restrains or affects the powers of the Corporation, Oversight Committee, Special Administrator or Independent Advisor under this act;
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> C
>
> (b) which stays restrains or affects any action taken, or proposed to be taken, by the Corporation, Oversight Committee, Special Administrator or Independent Advisor under this Act;
>
> (c) which compels the Corporation, Oversight Committee, Special Administrator or Independent Advisor to do or perform any act,
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> D
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> and any such order, if granted, shall be void and unenforceable and shall not be the subject of any process of execution whether for the purpose of compelling obedience of the order or otherwise.

E

[25] Counsel then submitted that since the first respondent being a company limited by guarantee was not capable of being a trust. Reference was made to s 2 of the Trustees (Incorporation) Act 1952 which states:

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> 2(1) Trustees or a trustee may be appointed by any body or association of persons established for any religious, educational, literary, scientific, social or charitable purpose, and such trustees or trustee may apply, in the manner hereinafter provided, to the Minister for a certificate of registration of the trustees or trustee of such body or association of persons as a corporate body.

G

[26] In this case, it was submitted that no such application had been made to the Minister to set up a trust.

[27] Learned counsel also raised the issue of limitation and referred us to the
H High Court case of *Mariam bte Shaik Mohd Omar v Ong Chin Poh* [1994] 3 MLJ 419 which referred to the Federal Court case of *Tio Chee Hing & Ors v Government of Sabah* [1981] 1 MLJ 207. In that case defendant did not enter appearance or file a defence but applied to strike out the statement of claim on the ground, inter alia, that the claim was statute barred. The learned trial judge held that the claim was statute barred and he dismissed the claim. The plaintiffs
I appealed to the Federal Court. The Federal Court dismissed the appeal and, inter alia, held:

> (2) in any event, the appellant's claim was clearly statute barred and not maintainable against a defence that relied on limitation.

THE COURT'S DECISION

[28] The crux of the issue raised in the instant appeal is whether a beneficiary under a trust has locus standi to bring an action in breach of trust against a company limited by guarantee and whether the said action was correctly struck out by the High Court under O 18 r 19 of the RHC 1980.

[29] Both the High Court and Court of Appeal held that the appellants had no locus and therefore allowed the striking out application by the respondents.

[30] In the case of *Government of Malaysia v Lim Kit Siang United Engineers (M) Berhad v Lim Kit Siang* [1988] 2 MLJ 12; [1988] 1 CLJ 219, Lim Kit Siang was seeking the aid of the court to interfere in the affairs of a proposed privatisation contract for the construction of the North & South Highway due to be signed between the UEM Engineers (M) Bhd ('UEM') and the Government of Malaysia, by asking for a declaration that the letter of intent issued by the government to UEM in respect of the North & South Highway ('NSH') contract was invalid and based on that premise he also prayed for a permanent injunction to restrain UEM from signing it with the government. He then filed a suit to that effect and at the same time applied by way of an ex parte summons in chambers for an interim injunction against UEM to restrain it from signing the NSH contract. The High Court refused the said application, but on appeal, the Supreme Court ordered the interim injunction.

[31] Soon after that UEM and the government applied to the High Court to have the interim injunction set aside and suits struck out on the ground that they disclosed no reasonable cause of action and also for lack of locus standi, in addition to being frivolous, vexatious and abuse of the court's process. The High Court dismissed both applications. On appeal to the Supreme Court, it was held, inter alia:

(1) On going through the respondent's statement of claim the court found nothing in it which shows the evidence of a factual situation. The respondent has no legal relationship with UEM which would indicate the existence of any legal right or duty in the relationship between them. Therefore the respondent's suit against UEM is unmaintainable and its application to strike it out should therefore be granted and consequently its appeal should be allowed.

(2) Since the suit against UEM is not maintainable there was no question of the respondent's entitlement to remedy of declaration and injunction permanent or otherwise. The interim injunction which was granted against UEM has no legal basis. Also the issue of the interim injunction against UEM is absolutely contrary to the expressed words of s 29 of the Government Proceedings Act 1956 as it has in effect indirectly restrained the government.

(3) In this case, not only has the respondent no cause of action against UEM but the court also has no power to issue the injunction interim or otherwise. The respondent's suit against UEM is therefore unmaintainable as it is also vexatious, frivolous and constitutes an abuse of the judicial process.

(4) There is nothing in the Constitution or in the Government Contracts Act which imposes a legal duty on the government to consult and accept the views of any taxpayer or group of taxpayers or to hear objections. However, there may be moral and political obligations on the part of the government to be mindful of taxpayers' objections but this is not a basis for the court to find a legal duty giving any taxpayer locus standi to maintain this suit as such moral obligations should be addressed at other forums.

[32] Salleh Abas LP in that case said at p 19 (MLJ); p 222 (CLJ) 'Going through the respondent's statement of claim I found nothing in it which shows the existence of such factual situation. The respondent has no legal relationship with UEM, which would indicate the existence of any legal right or duty in the relation between them. He is a complete stranger to the company. It is not shown that the respondent is a shareholder or has any interest, directly or indirectly, in the running of the affairs of UEM nor has UEM done any wrong to the respondent or deprived or threatened to deprive him of his right and privilege. The entitling factual situation simply does not exist. Therefore, the respondent's suit against UEM is unmaintainable and its application to strike it out should therefore be granted and consequently its appeal be allowed'.

[33] Abdul Hamid CJ Malaya (as he then was) in the same case at p 27 (MLJ); p 234 (CLJ), defined what is meant by 'locus standi' as follows:

> 'Locus standi' is generally understood to mean the right of a party to appear and be heard by a tribunal. A litigant is said to have locus standi, in effect standing to sue in a court of law, if that court recognises his or her ability to institute and maintain proceedings before it. The question of standing is thus separate and distinct from questions of the substantive merits and the legal capacity of the plaintiff. It follows, therefore, that a litigant may lack standing to bring a case which would succeed if brought by the right litigant.

[34] Bearing in mind what was said by Salleh Abas LP and Abdul Hamid (CJ Malaya) in the *Lim Kit Siang*'s case, we agree that to enable the appellant to initiate this action they have to show that they have the necessary locus standi first.

[35] On the facts and evidence available, the said properties were registered in the names of the third and ninth respondents which in turn are fully owned by the first respondent. Although, as argued by the appellant's counsel, that

they may have a cause of action since the first respondent was formed to help the economic position of the Penang Malays whom he said would be the beneficiaries of the purpose of forming the first respondent, we agree as to what was said by the trial judge in para 23 of his grounds of judgment that locus standi would be a necessary precondition before any party can bring the action. It is not disputed that there is no evidence to show that the appellants neither have a share nor became a trustee or director of the first, third or ninth respondents.

[36] The same sentiments were echoed by the Court of Appeal in its broad grounds to the effect that it may well be that the appellants were suing the respondents for alleged breach(es) of trust, fiduciary duties, and so forth. But the fundamental principles of company law cannot be disregarded ie the *sine qua non* for the appellants to bring the action against the respondents is that the appellants have to be members of the third or ninth respondents. In the absence of such membership, the Court of Appeal entirely agreed with the learned High Court judge that the appellants had no locus standi to sue the respondents and therefore the striking out made by the High Court was not wrong.

[37] We have gone through the grounds of judgment of the learned High Court judge and we are of the view that he had given due consideration to the issues raised, based on the evidence before him, had exercised his discretion correctly in striking out the action on the ground that the appellants had no locus standi to bring this action against the respondents. Likewise the Court of Appeal too was right in affirming the High Court decision.

[38] We see no reason to differ with the decisions of the courts below.

[39] We therefore answer the question posed in the negative. The appeal is therefore dismissed with costs.

[40] We now invite parties to address us on the issue of costs.

Appeal dismissed with costs.

Reported by Afiq Mohamad Noor